

**In the Matter of Arbitration Between  
Operating Engineers Local 49 [Chad  
Bishop] and Koochiching County**

**OPINION AND AWARD**

**BMS Case No. 05-PA-1036**

**GRIEVANCE ARBITRATION**

**ARBITRATOR**

Joseph L. Daly

**APPEARANCES**

On behalf of Operating Engineers Local 49  
Paul W. Iversen, Esq.  
Williams & Iversen, P.A.  
Roseville, MN

On behalf of Koochiching County  
Steven C. Fecker, Esq.  
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Duluth, MN

**JURISDICTION**

In accordance with the Agreement between International Union of Operating Engineers Local 49 Highway Department and Koochiching County, January 1, 2003-December 31, 2005; and, under the jurisdiction of the State of Minnesota, Bureau of Mediation Services, the above Grievance Arbitration was submitted to Joseph L. Daly, Arbitrator, on June 15, 2006 at the Koochiching County Courthouse, International Falls, Minnesota.

Post-Hearing Briefs were filed by the parties on June 30, 2006. The decision was rendered by the Arbitrator on August 14, 2006.

**ISSUES AT IMPASSE**

The Union states the issue as:

1. Did Local 49 raise a grievance, with respect to an issue covered under the Collective Bargaining Agreement, which is properly arbitrable under the Agreement?

2. Did Koochiching County violate the Collective Bargaining Agreement by failing to consider Chad Bishop's seniority in filling a vacant position covered by the Collective Bargaining Agreement and failing to hire [Mr.] Bishop for the position? If so, what is the appropriate remedy? [Post-Hearing Brief of Union at 4].

3. Koochiching County states the issues as:

A. Posting

1. Did the Employer violate the contract by denying a part-time (seasonal laborer) employee's request to post for a full-time position? If so, what is the remedy?
2. Is the posting grievance timely?

B. Hiring

1. Did the Employer violate the contract when it selected an applicant with superior relative qualifications instead of the Grievant? If so, what is the remedy?
2. Is an alleged violation of the County's Hiring Policy, not a part of the labor contract, grievable?

C. Resignation

1. If a contract violation were to be proven (which the Employer denies), what is the remedy where the grievant subsequently voluntarily resigned from County employment?

[Employer's Statement of Issues presented at Arbitration Hearing]

The potentially applicable contract provisions include:

**ARTICLE 19  
RECOGNITION**

Section A. The Employer recognizes International Union of Operating Engineers, Local #49 as the exclusive representative for collective bargaining purposes in the bargaining unit composed of all eligible employees of the public works department of the County of Koochiching, Minnesota, except all supervisory and confidential employees. Public Works employees shall be defined as Maintenance, Engineering and Environmental Services Employees. **Permanent part time employees are recognized under this contract, exclusive of health and life benefits and with separate seniority from permanent full time employees.** Jt.Exh.1 (emphasis added).

## **ARTICLE 10 SENIORITY**

Section A. Department Seniority. For the purpose of longevity increments and vacation benefits, seniority shall be the period of actual full-time employment with the Employer from the date of hire. Employees shall acquire seniority only upon completion of the probationary period, but the date shall relate back to the date of hire.

Section B. For the purpose of layoff, recall, and job promotions, seniority shall be the period of actual full-time employment with the Employer from the date of hire.

- (a) In the event of a layoff, the least senior employee shall be the first to be laid off. Senior maintenance department employees shall have the right to “bump” junior engineering employees, and vice-versa, provided the senior employee is qualified to do the work of the junior employee’s classification.
- (b) Recall of employees shall take place in the reverse order of layoff.
- (c) It is mutually agreed, that in the event that the laid off employee’s position must be filled, then the next senior employee shall be assigned to that position, and further, that he shall report to that location at the regular starting time unless instructed otherwise. (No paid travel time.) The past employer policy regarding travel time for temporary assignment or intermittent relocation shall continue (that is, paid travel time).
- (d) That any employee shall lose all seniority rights when he has been on layoff status for two (2) years.

Section C. Job Vacancies. If any vacancy which the Employer desire to fill or newly created position shall occur, such vacancy shall be posted on the bulletin Board for five (5) calendar days. Temporary assignments may be made or temporary employees hired to fill the vacancy during the period of posting. Any full-time employee may apply in writing for such vacancy during the posting period. **Seniority qualifications shall be a consideration as to which applicant shall be hired to fill such job opening, and the relative qualifications for the job opening shall control, unless such qualifications are approximately equal, and then the employee with the most seniority shall be selected if qualified.** The qualifications necessary for a particular vacancy and the determination of relative qualifications of the various applicants shall be determined by the Koochiching County Board of Commissioners or their designee. In the determination of relative seniority for the purposes of this section, if there are applicants for such job vacancy within the engineering division, or within the maintenance division, applicants within the division in which the vacancy than the applicants from outside the division. If there be no application from within the same division as the vacancy, then seniority for the purposes hereof shall be on a department basis. The successful applicant for the vacancy shall be on a probationary basis for the new position for a period of six (6) months. During the probationary period, the Koochiching County Board of Commissioners, or its designee, may at its discretion return the applicant to his prior classification and seniority and again post the notice vacancy. If the successful applicant has not been re-transferred to his prior classification during the probationary period, the employee shall be classified in such new job. The rate of pay for the new position shall be effective on the initial date of promotion. Jt.Exh.1 at pp. 9-10 (emphasis added).

## **ARTICLE 11 GRIEVANCE**

Section A. Definition. A grievance shall be defined as a dispute or disagreement raised by an employee against the Employer involving the interpretation or application of the specific provisions of the Agreement.

Section B. Grievances. A grievance as herein defined, shall be processed in the following manner: An employee who has a grievance shall within ten (10) working days after such alleged violation has occurred, submit it to his supervisor, who is designated for this purpose by the Employer. The supervisor shall give his oral answer within ten (10) working days after such presentation.

Section C. If the grievance is not settled in Step 1 and the employee wishes to appeal the grievance to Step 2 of the grievance procedure, it shall be referred in writing to the County Engineer within ten (10) working days after the designated supervisor's answer in Step 1 and shall be signed by both the employee and the Union steward. The written grievance shall set forth the nature of the grievance, the facts on which it is based, the provisions of the Agreement allegedly violated and the relief requested. The Dep't Head, or representative, shall discuss the grievance within five (5) working days with the Union steward at a time mutually agreeable to the parties. If the grievance is settled as a result of such meeting, the settlement shall be reduced to writing and signed by the Dep't Head, or his representative shall give the Employer's written answer to the Union steward within ten (10) working days following the meeting.

Section D. If the grievance is not settled in Step 2 and the Union desires to appeal, it shall be referred by the Union in writing to the Chairman of the Board of County Commissioners within ten (10) working days after the Dep't Head's answer in Step 2. A meeting between the Union representative, the Dep't Head and the Board of Commissioners shall be held at a time mutually agreeable to the parties. If the grievance is settled as a result of such meeting, the settlement shall be reduced to writing and signed by the Chairman of the Board of County Commissioners, or his representative, and the Union. If no settlement is reached, the Chairman of the Board of County Commissioners or his representative, shall give the Employer's written answer to the Union within five (5) working days following the meeting.

Section E. If the grievance is not settled in accordance with the foregoing procedure, the Union may refer the grievance to arbitration within seven (7) working days after the receipt of the Employer's answer in Step 3. The parties shall attempt to agree upon an arbitrator within ten (10) working days after the receipt of notice of referral, and in the event the parties are unable to agree upon an arbitrator within said ten (10) day period, either party may request the Public Employment Relations Board to submit a panel of five (5) arbitrators. The grieving party shall first strike two (2) names from the list and the other party shall then strike two (2) names from the list. The remaining person shall be the arbitrator. The arbitrator shall be notified of his selection by a joint letter from the Employer and the Union requesting that he set a time and a place, subject to the availability of the Employer and the Union representatives.

Section F. The arbitrator shall have no right to amend, modify, nullify, ignore, add to, or subtract from the provisions of this Agreement. He shall consider and decide only the specific issue submitted to him in writing by the Employer and the Union, and shall have no authority to make a decision on any other issue not to [sic] submitted to him. The arbitrator shall be without power to make decisions contrary to or inconsistent with, modifying or varying in any way the application of laws and rules and regulations

having the force and effect of law. The arbitrator shall submit in writing the decision within thirty days following the close of the hearing or the submission of briefs by the parties, whichever is later, unless the parties agree to an extension thereof. The decision shall be based solely upon the arbitrator's interpretation of the meaning or application of the expressed terms of this Agreement to the facts of the grievance presented. The decision of the arbitrator shall be final and binding.

Section G. If a grievance is not presented within the time limits set forth above, it shall be considered "waived." If a grievance is not appealed to the next step within the specified time limit or any agreed extension thereof, it shall be considered settled on the basis of the Employer's last answer. If the Employer does not answer a grievance or an appeal thereof within the specified time limits, the Union may elect to treat the grievance as denied at that step and immediately appeal the grievance to the next step. The time limit in each step may be extended by mutual written agreement of the Employer and the Union representatives involved in each step. The term "working days" as used in this Article shall mean days Monday through Friday inclusive.

Section H. The fee and expenses of the arbitrator shall be divided equally between the Employer and the Union, provided, however, that each party shall be responsible for compensating its own representatives and witnesses. Jt.Exh.1 at pp. 10-12

## **FINDINGS OF FACT**

1. On February 25, 2005 Mr. Chad Bishop, a seasonal laborer, otherwise known as a "permanent part-time" employee, since May 26, 1998, working within the Highway Maintenance Department, filed a "grievance" through his union steward, Mike Kochaniuk. Mr. Kochaniuk approached Mr. Richard Lehtinen, Environmental Services Director, who oversees the operation of the Koochiching County Transfer Station, and told him that he believed the hiring of "an outside employee to work as a transfer station/recycling operator" was inappropriate, "both under the contract and the county's own hiring policy". [Post-Hearing Brief of Union at 12]. [Mr.] Lehtinen told [Mr.] Kochaniuk that the decision was in the hands of the county board and there was nothing [Mr.] Lehtinen could do. Based upon this representation by [Mr.] Lehtinen, [Mr.] Kochaniuk drafted a letter to the Koochiching County Board and left that letter on the desk of Teresa Jacksa, the Human Resources Director for the county. The letter stated in its entirety:

TO: KOOCHICHING COUNTY BOARD

FEB. 25, 2005

FROM: IUOE LOCAL 49

THIS COMPLAINT OF UNFAIR HIRING PRACTICES IS BEING MADE BY  
THE UNION ON BEHALF OF OUR MEMBER, CHAD BISHOP, FOR THE

TRANSFER STATION POSITION. WE BELIEVE THAT BASED ON SCORES FROM THE INTERVIEW PROCESS AND EQUIPMENT TESTING, CHAD, WAS THE TOP SCORING CANDIDATE AND THEREFORE SHOULD HAVE BEEN HIRED. ACCORDING TO THE COUNTY'S OWN HIRING POLICY THE CANDIDATE RECEIVING THE HIGHEST SCORE BASED ON A PRESENT POINT SYSTEM IS THE ONE THAT SHOULD BE HIRED. THIS WAS CHAD BISHOP.

ALSO, THE HIRING POLICY REQUIRES THAT ALL CANDIDATES BE ASKED THE SAME QUESTIONS DURING THE INTERVIEW PROCESS. THIS WAS NOT THE CASE, AND IT CAN BE VERIFIED EASILY BY ASKING THE INTERVIEWERS. CHAD WAS ASKED A QUESTION BY THE ENVIRONMENTAL SERVICES DIRECTOR THAT WAS NOT ASKED OF THE OTHER CANDIDATES.

PLEASE GIVE THIS COMPLAINT YOUR UTOMOST ATTENTION AS THE NEW EMPLOYEE BEGINS WORK SHORTLY. WE AWAIT A RESPONSE FROM THE COUNTY BOARD ASAP.

SINCERELY,

MIKE KOCHANIUK  
UNION STEWARD

[Union Exhibit B]

2. Koochiching County no longer has a landfill, and now runs a transfer station in which garbage is accumulated from throughout the county; recyclables are sorted from other garbage, and garbage is compacted and trucked to a landfill in northwestern Minnesota that is now being used by the county. The transfer station is within the Environmental Services Department of the county, under the direction of Mr. Richard Lehtinen. Two transfer station/recycling operators are within the Local 49 Bargaining Unit, in the Environmental Services Department. One of the transfer station/recycling operator positions was vacant for a considerable period of time due to the death of the incumbent in that position. Because of a county hiring freeze, that vacant position was not immediately filled. The county staffed the transfer station during the interim period when the position was vacant by assigning employees from other county departments to work at the transfer station, as necessary. Chad Bishop was one of the employees assigned to work the transfer station. When he was not needed by the

highway department, Mr. Bishop was assigned to work as transfer station/recycling operator. During those times, he sometimes worked with another transfer station/recycling operator, and sometimes worked on his own. Basically, he performed all the functions of a transfer station/recycling operator during that time. There were no complaints from the public about his work.

3. At the end of 2004, the county posted the vacant transfer station/recycling operator position. Mr. Bishop signed the posting, but was informed that he did not have any rights under the contract to sign a posting. No grievance was filed with respect to Mr. Bishop not being allowed to sign the posting.

Mr. Bishop then applied for the position, the same as a non-county employee. Mr. Bishop was one of 76 applicants.

4. The applicants were screened by a three-member committee whose members were given criteria and numerically scored each applicant using a 100 point scale. Mr. Bishop ranked 13<sup>th</sup> upon the completion of the application screening. One of the committee members, a bargaining unit member, rated Mr. Bishop's application substantially lower than the other two applicants who ultimately became finalists. The union raised concerns that it was a conflict of interest for a bargaining unit member to be involved in the hiring process of other potential bargaining unit members. Because of the complaint a bargaining unit member was not included in later stages of the hiring process. In the initial screening process, Mr. Bishop ranked lowest relative to the other candidates on the application screening, the only portion of the process in which the Local 49 member participated. If that Local 49 member's screening of Mr. Bishop's application is removed from consideration, Mr. Bishop had a lower application screening score of 5 points less, than Mr. Fuller, who was ultimately appointed to the job.

5. After Mr. Bishop was notified he would not receive an interview, Mr. Kochaniuk approached Mr. Lehtinen and pointed out that the county Hiring Policy requires qualified county employees be given an interview. While only two of the 76 applicants had moved on to the final

interview process after the initial screening, Mr. Bishop was added to the final interview list making a total of three candidates who were to be interviewed.

6. Pursuant to the county's hiring policy, the interviews were conducted by a three-member committee using a fixed set of job-related questions. Mr. Bishop was asked an additional question by Mr. Lehtinen regarding his desire for the job, given his background as an engineer.

The employer then conducted an "equipment operations" test. Mr. Bishop was among the three finalists tested. The applicant who ultimately filled the position, Wayne Fuller, scored above Mr. Bishop on the bulldozer, the most difficult piece of equipment [in the judgment of Mr. Lehtinen] which is operated at the transfer station. Mr. Bishop received more points on the equipment test overall because he scored higher on "backing the truck". Mr. Lehtinen was advised by Mr. Greg Williams, a full-time transfer station/recycling operator and bargaining unit member, that Mr. Fuller would "master the truck in a week or less".

Upon completing the application screening, the interviews, and the equipment test, Mr. Lehtinen determined that Mr. Fuller was the applicant with the highest point total taking into account the 1) screening, 2) interviews and 3) equipment tests.

7. Mr. Lehtinen took the weekend to reflect on his selection. The conclusion that Mr. Wayne Fuller was the best qualified applicant was confirmed by Mr. Lehtinen when he considered what he felt were the two most important qualifications for the transfer station/recycling operator, i.e., the ability to work well with the public, and the ability to work for all as a team player, since the facility operates with a limited number of employees and without direct supervision. Mr. Lehtinen concluded that Mr. Wayne Fuller was best qualified in each of these respects, as evidenced at least in part by the fact that all three members of the interview panels scored Mr. Fuller higher on Question 6, "public relations", and Question 7, "work as a team". [Testimony of Mr. Lehtinen; Employer Exhibit No. 22, Employer Exhibit No. 30; Employer Exhibit No. 31, Page 1].

On February 22, 2005, Mr. Lehtinen announced to the county board that he had hired Mr. Wayne Fuller for the full-time transfer station/recycling operator position.

8. When union steward Kochaniuk filed his “Complaint For Unfair Hiring Practice” [See, Finding of Fact #1, Union Exhibit B, above] the board took the position that Mr. Bishop and the Union had not followed the proper grievance procedures under the contract and therefore the alleged grievance was not grievable. Further, the county takes the position that even if the February 25, 2005 “Complaint of Unfair Hiring Practice” is a grievance, it is not grievable because county policy is not grievable and is outside the scope of the contract.

The Union contends the “Complaint of Unfair Hiring Practice” is, in fact, a grievance; and, all along has been understood by the county to be a grievance; otherwise the county board would not have taken the position that the matter was not “grievable”. Further, the union contends that because Mr. Lehtinen said the hiring decision “was in the hands of the county board” and there was nothing Mr. Lehtinen could do about it, the next proper Step 3 of the grievance process is to the county board. Further, Step 2 goes through the county engineer who has authority over the Highway Department, but not the Environmental Services Department in which the dispute arose. Consequently, skipping Step 2 of the grievance process and advancing it to Step 3 was proper, argues the union. “Union Exhibit B is a grievance letter dated February 25, 2005 and constitutes Step 3 of the grievance procedure”. [Post-Hearing Brief of Union at 16].

9. Essentially, the Union contends:

a. Local 49 appropriately raised the grievance under the contract and it is properly before this arbitrator;

b. Koochiching County violated the Collective Bargaining Agreement by failing to consider Chad Bishop’s seniority in the hiring process and by not hiring Chad Bishop when his qualifications were better than or equal to the chosen candidate;

c. The grievance should be sustained and it should be found that the county board should have hired Mr. Bishop for the transfer station/recycling operator position in the Environmental Services Department. The arbitrator should order the county to reinstate Mr. Bishop to the transfer station/recycling operator position that was rightfully his under the contract; or, to a different open permanent full-time position of equal or greater pay for which he is qualified, with full back-pay and without loss of seniority or any benefits. [See generally, Post-Hearing Brief of Union pp. 15-28].

10. Koochiching County essentially contends:

a. The employer did not violate the contract in filling the vacancy in the full-time transfer station operator position because part-time employees do not have any right to exercise seniority to fill full-time vacancies, but rather must supply like outside applicants;

b. The employer did not violate the contract in filling the vacancy where [Mr. Bishop's] relative qualifications, as determined by the employer in its exclusive discretion were not "approximately equal";

c. Mr. Bishop's remedy for violation of the contract should not include back-pay nor placement in the position should the arbitrator find in favor of Mr. Bishop. [See generally Post-Hearing Brief of Koochiching County pp. 4-14].

## **DECISION AND RATIONALE**

### **A. Grievance and arbitrability**

When Mr. Bishop discovered on February 22, 2005 that he had not received the job, he contacted Union Steward Kochaniuk and told him he wanted to "file a grievance". Mr. Kochaniuk approached Mr. Lehtinen and told him he believed the hiring of Mr. Fuller was inappropriate, both under the contract and the county's own hiring policy. Mr. Lehtinen told Mr. Kochaniuk that the decision was in the hands of the county board and there was nothing Mr. Lehtinen could do. Based on this representation by Mr. Lehtinen, Mr. Kochaniuk drafted the February 25, 2005 "Complaint of Unfair

Hiring Practices” to the county board. Because the question was before the county board, Mr. Kochaniuk determined that Step 2 of the grievance procedure was unnecessary.

The February 25, 2005 “Complaint of Hiring Practices” can be properly construed as a Step 3 grievance before the county board. In fact, the board discussed the matter at the meeting and stated it did not consider the issue “grievable”. Mr. Thomas Pariseau, Business Agent and President of the Union, testified that he specifically referenced the contract in his comments to the Koochiching County Board and told the board it would be “up to an arbitrator to decide if an issue was grievable”. [Post-Hearing Brief of Union at 13]. On cross-examination, Mr. Pariseau indicated that it was possible he used the term “higher authority” or some term other than arbitrator to indicate that someone else would have to decide whether the issue was grievable. [Id. at 14].

Because Step 2 goes through the county engineer who has authority over the Highway Department and not the Environmental Services Department in which the dispute arose, skipping Step 2 and advancing the grievance to Step 3, the county board, was proper.

Based on the above analysis, it is held that Step 2 was properly skipped and the “Complaint of Unfair Hiring Practices dated February 25, 2005 to the Koochiching County Board was the proper Step 3 in the grievance process.

**B. Seniority Rights to part-time employees for purposes of filling full-time vacancies**

The issue of whether permanent part-time employees have a right to use seniority for purposes of applying for and filling a full-time vacancy is hotly contested between the union and Koochiching County. It is the contention of the Union that the language of the agreement specifies “seniority qualifications shall be a consideration as to which applicant shall be hired to fill such job opening, and the relative qualifications for the job opening shall control, unless such qualifications are approximately equal, then the employee with the most seniority shall be selected if qualified”. [Joint Exhibit No. 1 at 10]. “Nothing in that sentence” contends the Union, “limits seniority consideration to full-time employees”. The union argues that when the parties intended that application of the provision was to be

limited to full-time employees, they specifically so stated. In the previous sentence, the parties explicitly limited posting rights to full-time employees. “Having specifically limited posting rights to full-time employees, the failure to specify full-time seniority qualifications or the seniority qualifications of full-time employees in the sentence regarding consideration of seniority qualifications, is strong indication that limitation to full-time employment was not intended”, states the Union. [Post-Hearing Brief of Union at 20].

Koochiching County counters this argument by showing the negotiations history of the agreement and by arguing that “part-time employees are hired as laborers and work as laborers. They are not doing the work of full-time employees on a part-time basis. They are not ‘learning the job’ or advancing their skills while employed as a part-time laborer. This is the reason the employer does not want to give laborers preference when hiring for full-time bargaining unit positions”. [Post-Hearing Brief of Koochiching County at 2, citing testimony of Ms. Teresa Jacksa]. Koochiching County contends that the bargaining history shows that the county did not understand or agree that the language in Article 10 gave seniority rights to part-time employees for purposes of filling full-time vacancies. The county contends “it is apparent, therefore, both from the contract language itself, the negotiations history and the manner in which the Union chose to protest the hiring, that the mutual understanding and intent of the parties regarding the meaning of Article 10, Section C is the same today as it was under the same language in 1993, ... i.e., part-time have no contract rights to full-time position. Part-time can apply for full-time vacancies just like outside applicants. The hiring of outside applicants is outside the scope of regulation by the contract”. [Post-Hearing Brief of Koochiching County at 9].

It is held that the Union has failed to meet its burden of proof that the employer violated the contract in filling the vacancy. Part-time employees do not have seniority rights to fill full-time vacancies under the contract. The grievance is denied on this basis. Nevertheless, I will continue to discuss the “relative qualifications” aspect of this case.

### **C. Relative Qualifications of Mr. Bishop**

While it has already been determined that Article 10, Section C does not provide part-time employees with the right to use seniority to fill full-time positions, the employer also did not violate the contract by awarding the position to another applicant, because the relative qualifications, as determined by the employer, were not “approximately equal”. Mr. Lehtinen, the department head, determined that Mr. Wayne Fuller, not Mr. Bishop, was the “best” qualified applicant. Mr. Fuller’s qualifications exceeded those of Mr. Bishop, both in terms of his point score in the entire hiring process and in view of the additional weighting which the department head gave to certain job relevant factors. Mr. Bishop’s relative qualifications were not “approximately equal”. Mr. Fuller received the highest point total in the process of application screening, interviewing and equipment testing. Mr. Fuller’s higher qualifications were further confirmed when Mr. Lehtinen reflected on what he considered to be the two most important criteria for a successful transfer station/recycling operator, i.e., ability to work with the public and ability to be a team player. [Employer Exhibit No. 21]. All three interview panel members rated Mr. Fuller higher on both these criteria than Mr. Bishop. Although Mr. Bishop did score higher on the equipment tests, Mr. Lehtinen appropriately considered that Mr. Fuller was better able to operate the more complicated piece of equipment, the bulldozer, whereas his lower proficiency on the truck could be rectified “within a week or less” according to Greg Williams, a full-time transfer station/recycling operator and a bargaining unit member. [Employer Exhibit No. 22; Testimony of Mr. Lehtinen]. The burden of proof to show bad faith, arbitrariness, capriciousness or discrimination on the part of the employer, or to prove that the employer’s evaluation of abilities was clearly wrong, is on the employee/union. See Lehigh Portland Cement Co., 105 LA 860 (Baroni, A., 1995). The Union has not shown bad faith, arbitrariness, capriciousness, discrimination or that Mr. Lehtinen’s judgment was clearly wrong. In other words, the union has not met its burden of proof to show that the relative qualifications for the job were approximately equal. Rather, the employer has proven by a preponderance of evidence that it exercised sound and rationale judgment in determining that Mr. Fuller was the better qualified candidate for the job.

Based on the above rationale, the grievance is denied.

Dated: August 14, 2006.

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Joseph L. Daly  
Arbitrator